

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUAN DIAZ,

Plaintiff,

vs.

JAMES E. LEWANDOWSKI,

Defendant.

8:17CV3009

ORDER

This matter is before the Court on defendant James E. Lewandowski's ("Lewandowski") Motion to Dismiss based on lack of subject matter jurisdiction (Filing No. 4) under Federal Rule of Civil Procedure 12(b)(1). For the reasons stated below, the motion is granted.

On January 20, 2017, pro se plaintiff Juan Diaz filed a Complaint based on state law against Lewandowski for damages allegedly resulting from Lewandowski's negligence during a medical procedure. In the Complaint, Diaz claimed this Court has jurisdiction based on diversity of citizenship but stated he and Lewandowski were both citizens of the state of Nebraska. Lewandowski subsequently moved to dismiss the case under Rule 12(b)(1), because the Complaint showed on its face there was no diversity of citizenship. Diaz did not respond to the motion.

Federal jurisdiction over a state law claim requires the plaintiff and defendant be citizens of different states. 28 U.S.C. § 1332. The face of Diaz's Complaint states he and Lewandowski are both citizens of Nebraska. There are no other grounds for federal jurisdiction stated in the Complaint. There is no diversity jurisdiction.

IT IS ORDERED:

1. Lewandowski's Motion to Dismiss (Filing No. 4) is granted.

2. This case is dismissed without prejudice.

Dated this 1st day of March, 2017.

BY THE COURT:

s/ Robert F. Rossiter, Jr.
United States District Judge